

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

MIKE DEANGELIS, Derivatively on Behalf  
of BABCOCK & WILCOX ENTERPRISES,  
INC.,

Plaintiff,

v.

E. JAMES FERLAND, JENNY L. APKER,  
DANIEL W. HOEHN, LESLIE KASS,  
THOMAS A. CHRISTOPHER, CYNTHIA S.  
DUBIN, BRIAN K. FERRAIOLI, STEPHEN  
G. HANKS, ANNE R. PRAMAGGIORE, and  
LARRY L. WEYERS,

Defendants,

-and-

BABCOCK & WILCOX ENTERPRISES,  
INC., a Delaware corporation,

Nominal Defendant.

C.A. No. 18- 281-VAC-SRF

Date Action Filed: February 16, 2018

DAN HEGEMAN, Derivatively on Behalf of  
BABCOCK & WILCOX ENTERPRISES,  
INC.,

Plaintiff,

v.

E. JAMES FERLAND, JENNY L. APKER,  
DANIEL W. HOEHN, LESLIE KASS,  
THOMAS A. CHRISTOPHER, CYNTHIA S.  
DUBIN, BRIAN K. FERRAIOLI, STEPHEN  
G. HANKS, ANNE R. PRAMAGGIORE, and  
LARRY L. WEYERS,,

Defendants,

-and-

BABCOCK & WILCOX ENTERPRISES,  
INC., a Delaware corporation,

Nominal Defendant.

C.A. No. 18- 282-VAC-SRF

Date Action Filed: February 16, 2018

*[Caption continues on following page.]*

BUD AND SUE FRASHIER FAMILY  
TRUST, Derivatively on Behalf of BABCOCK  
& WILCOX ENTERPRISES, INC.,

Plaintiff,

v.

JENNY L. APKER, E. JAMES FERLAND,  
STEPHEN G. HANKS, LARRY L. WEYERS,  
THOMAS A. CHRISTOPHER, BRIAN K.  
FERRAIOLI, ANNE R. PRAMAGGIORE, and  
CYNTHIA S. DUBIN,

Defendants,

-and-

BABCOCK & WILCOX ENTERPRISES,  
INC., a Delaware corporation,

Nominal Defendant.

C.A. No. 18- 305-VAC-SRF

Date Action Filed: February 22, 2018

**STIPULATION AND [PROPOSED] ORDER CONSOLIDATING RELATED  
DERIVATIVE ACTIONS AND APPOINTING CO-LEAD AND  
CO-LIAISON COUNSEL FOR PLAINTIFFS**

**WHEREAS**, there are presently three related shareholder derivative actions pending in this District against the Individual Defendants,<sup>1</sup> who are certain current and former directors and officers of nominal defendant Babcock & Wilcox Enterprises, Inc. ("B&W" or the "Company") (B&W, together with the Individual Defendants, are collectively referred to herein as "Defendants"): *Deangelis v. Ferland, et al.*, C.A. No. 18- 281; *Hegeman v. Ferland, et al.*, C.A. No. 18- 282; and *Bud and Sue Frashier Family Trust v. Apker, et al.*, C.A. No. 18- 00305 (together, the "Related Derivative Actions");<sup>2</sup>

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<sup>1</sup> The "Individual Defendants" include E. James Ferland, Jenny L. Apker, Daniel W. Hoehn, Leslie Kass, Thomas A. Christopher, Cynthia S. Dubin, Brian K. Ferraioli, Stephen G. Hanks, Anne R. Pramaggiore, and Larry L. Weyers.

<sup>2</sup> Each of the Related Derivative Actions is assigned to the vacant judgeship at this time.

**WHEREAS**, under Fed. R. Civ. P. 42(a), when actions involve "a common question of law or fact," the Court may "(1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay";<sup>3</sup>

**WHEREAS**, the Related Derivative Actions challenge similar alleged conduct by the Company's directors and executive officers and involve common questions of law and fact;

**WHEREAS**, the parties therefore respectfully submit that consolidation of the Related Derivative Actions is appropriate;

**WHEREAS**, to avoid potentially duplicative actions and to prevent any waste of the Court's resources, the parties agree that the Related Derivative Actions should be consolidated for all purposes, including pre-trial proceedings and trial, into a single consolidated action (hereinafter referred to as the "Consolidated Derivative Action");

**WHEREAS**, in order to realize the efficiencies made possible by consolidation of the Related Derivative Actions, the parties agree that Robbins Arroyo LLP and The Brown Law Firm, P.C. shall be designated as Co-Lead Counsel representing plaintiffs in the Consolidated Derivative Action;<sup>4</sup>

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<sup>3</sup> See *D'Alessandro v. U.S.*, 2005 WL 984352, at \*1 (D. Del. Apr. 27, 2005) ("Federal Rule of Civil Procedure 42 provides for consolidation '[w]hen actions involv[e] a common question of law or fact ... to avoid unnecessary costs or delay.'")' *In re Sterling Fin. Corp. Sec. Class Action*, 2007 WL4570729, at \*1 (E.D. Pa. Dec. 21, 2007) ("Rule 42(a) grants the court broad discretion to consolidate actions in order to 'facilitate the administration of justice.'").

<sup>4</sup> See 9A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure: Federal Rules of Civil Procedure* §2385 (3d. 2008) (court "may appoint one or more attorneys as liaison counsel, lead counsel, or trial counsel for the consolidated cases" and "assign the designated lawyers specific responsibilities"); *Manual for Complex Litigation* §10.22 (4th ed. 2004) ("[i]nstituting special procedures for coordination of counsel early in the litigation will help to avoid" waste of time and money, confusion and misdirection of the litigation, and undue burdens on the court).

**WHEREAS**, the parties also agree that Farnan LLP and Cooch and Taylor, P.A. shall be designated Co-Liaison Counsel representing plaintiffs in the Consolidated Derivative Action;

**WHEREAS**, plaintiffs intend to file a consolidated complaint;

**WHEREAS**, counsel for the parties agree that deferring the response deadlines for all Defendants until after plaintiffs file their anticipated consolidated complaint will conserve party and judicial resources; and

**WHEREAS**, the parties further agree that an initial case management conference, attendant deadlines, and related ADR procedures are premature prior to Defendants' anticipated motions to dismiss and should be deferred until the Court issues a ruling on Defendants' anticipated motions to dismiss.

**WHEREFORE**, the parties, through their undersigned counsel, hereby agree, stipulate, and respectfully request that the Court enter an Order as follows:

1. Defendants need not answer, move or otherwise respond to any of the individual complaints filed in the Related Derivative Actions.

2. The following actions shall be consolidated for all purposes, including pre-trial proceedings and trial, into one consolidated action:

<b><u>Case Name</u></b>	<b><u>C.A. No.</u></b>	<b><u>Filing Date</u></b>
<i>DeAngelis v. Ferland, et al.</i>	18- 281	February 16, 2018
<i>Hegeman v. Ferland, et al.</i>	18- 282	February 16, 2018
<i>Bud &amp; Sue Frashier Family Tr. v. Apker</i>	18- 305	February 22, 2018

3. Every pleading filed in the Consolidated Derivative Action, or in any separate action included herein, must bear the following caption:

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

IN RE BABCOCK & WILCOX  
ENTERPRISES, INC. SHAREHOLDER  
DERIVATIVE LITIGATION

This Document Relates To:

ALL ACTIONS.

Lead C.A. No. 18- 281

(Consolidated with Nos. 18- 282  
and 18- 305)

4. The files of the Consolidated Derivative Action will be maintained in one master file under Lead C.A. No. 18- 281.

5. Co-Lead Counsel for plaintiffs for the conduct of *In re Babcock & Wilcox Enterprises, Inc. Shareholder Derivative Litigation*, Lead C.A. No. 18- 281, are designated as follows:

**ROBBINS ARROYO LLP**  
BRIAN J. ROBBINS  
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-and-

**THE BROWN LAW FIRM, P.C.**  
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240 Townsend square  
Oyster Bay, NY 11771  
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Facsimile: (516) 344-6204  
tbrown@thebrownlawfirm.net

6. Plaintiffs' Co-Lead Counsel, whose firm resumes are attached hereto as Exhibit A, shall have the sole authority to speak for plaintiffs in all matters regarding pre-trial procedure, trial, and settlement negotiations and shall make all work assignments in such manner as to facilitate the orderly and efficient prosecution of this litigation and to avoid duplicative or unproductive effort.

7. Plaintiffs' Co-Lead Counsel will be responsible for coordinating all activities and appearances on behalf of plaintiffs. No motion, request for discovery, or other pre-trial or trial proceedings will be initiated or filed by any plaintiffs except through plaintiffs' Co-Lead Counsel.

8. Co-Liaison Counsel for plaintiffs for the conduct of *In re Babcock & Wilcox Enterprises, Inc. Shareholder Derivative Litigation*, Lead C.A. No. 18- 281, are designated as follows:

**FARNAN LLP**  
BRIAN E. FARNAN  
MICHAEL J. FARNAN  
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Wilmington, DE 19801  
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**COOCH AND TAYLOR, P.A.**  
BLAKE A. BENNETT  
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1000 West Street, 10th Floor  
Wilmington, DE 19899  
Telephone: (302) 984-3889  
Facsimile: (302) 984-3939  
bbennett@coochtaylor.com

9. Plaintiffs' Co-Liaison Counsel shall be available and responsible for communications to and from this Court, including distributing orders and other directions from the Court to counsel. Plaintiffs' Co-Liaison Counsel shall be responsible for creating and maintaining a master service list of all parties and their respective counsel.

10. Defendants' counsel may rely upon all agreements made with any of plaintiffs' Co-Lead or Co-Liaison Counsel, or other duly authorized representative of plaintiffs' Co-Lead or Co-Liaison Counsel, and such agreements will be binding on plaintiffs.

11. This Order shall apply to each purported derivative action arising out of the same or substantially the same transactions or events as the Related Derivative Actions that is subsequently filed in, removed to, or transferred to this Court.

12. If a case that properly belongs as part of *In re Babcock & Wilcox Enterprises, Inc. Shareholder Derivative Litigation*, Lead C.A. No. 18- 281, is hereafter filed in this Court or transferred here from another court, plaintiffs' Co-Lead Counsel shall promptly call to the attention of the Court the filing or transfer of any case that might properly be consolidated as part of *In re Babcock & Wilcox Enterprises, Inc. Shareholder Derivative Litigation*, Lead C.A. No. 18- 281.

13. In the interest of efficiency and avoidance of unnecessary duplication of effort or judicial resources by the Court or the parties, it is further Ordered that (i) within forty-five (45) days of the entry of an order consolidating the Related Derivative Actions, Plaintiffs shall file a consolidated complaint or designate an operative complaint, (ii) Defendants shall answer, move against, or otherwise respond to the consolidated complaint or designated operative complaint within forty-five (45) days of its filing or designation; (iii) if Defendants move to dismiss the consolidated complaint or designated operative complaint, Plaintiffs shall file any brief in

opposition to the motion to dismiss within forty-five (45) days from the filing of that motion; and  
(iv) Defendants shall file any reply brief in further support of Defendants' motion to dismiss the consolidated complaint or designated complaint within thirty (30) days from the filing of Plaintiffs' opposition brief.

14. Pursuant to Fed. R. Civ. P. 5(b)(2)(E), all parties consent to service by e-mail of any document required to be served in the Consolidated Derivative Action.

Dated: April 9, 2018

**COOCH AND TAYLOR, P.A.**

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*Counsel for Plaintiff Bud and Sue Frashier  
Family Trust and [Proposed] Co-Lead Counsel  
for Plaintiffs*

Dated: April 9, 2018

**FARNAN LLP**

/s/ Michael J. Farnan

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*Counsel for Plaintiff Mike DeAngelis and [Proposed] Co-Lead Counsel for Plaintiffs*

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*Counsel for Plaintiff Dan Hegeman*

Dated: April 9, 2018

**RICHARDS, LAYTON & FINGER, P.A.**

/s/ Christine D. Haynes  
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Steven J. Fineman (#4025)  
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*Attorneys for Defendants*

**IT IS SO ORDERED** this \_\_\_\_ day of April, 2018.

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U.S. DISTRICT COURT JUDGE